

J. Joseph Bainton (JB-5934)
Deana D. Ahn (DA-9532)
BAINTON McCARTHY LLC
Attorneys for Plaintiff Desmond Fountain
26 Broadway, Suite 2400
New York, New York 10004
Tel. (212) 480-3500
Fax (212) 480-9557

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DESMOND FOUNTAIN,

Plaintiff,

- against -

08 Civ. 3285 (LAK) (THK)

**DECLARATION OF
DEANA D. AHN**

BELROSE, INC.
d/b/a BELROSE GALLERIES,

Defendant.

-----X

DEANA D. AHN, pursuant to 28 U.S.C. § 1746, hereby declares:

1. I am a member of the bar of this Court and an attorney of the law firm of Bainton McCarthy LLC, attorneys for Plaintiff Desmond Fountain. I submit this declaration in support of Mr. Fountain's application, by an Order directing Defendant Belrose, Inc. ("Belrose") to show cause why it is not in civil contempt of this Court's Default Judgment, Permanent Injunction and Order for Other Relief dated July 2, 2008 (the "Order"), and for an order imposing coercive sanctions in the amount of \$10,000 per day until such time as Belrose complies with the Order.

2. Attached hereto as Exhibit A is a true and correct copy of the Order.

3. As a way of procedural background, for the purposes of determining damages, the matter has been referred to Magistrate Judge Katz pursuant to Order of Reference

to a Magistrate Judge dated July 2, 2008 (the “Reference Order”), a true and correct copy of which is attached hereto as Exhibit B.¹

4. Attached hereto as Exhibit C is a true and correct copy of an affidavit of service dated July 9, 2008. The affidavit shows that copies of the Order and the Reference Order were served upon Belrose on July 8, 2008.

5. As a part of preparation for the Proposed Findings to be submitted to Judge Katz, I personally viewed Belrose’s website to see if it was still engaged in any infringing activities in contempt of the Order. Attached hereto as Exhibit D is a true and correct copy of a print-out of <http://www.belrose.com/>.

6. While the website link to Belrose’s eBay store suggests that the store no longer exists, Belrose has managed to resume the sale of piratical works through its own website. Rather than clicking on links shown on the homepage, I typed in “/bronze” at the end of the domain name (i.e., <http://www.belrose.com/bronze>), which pulled up four links, including one entitled “Children.” Attached hereto as Exhibit E is a collection of true and correct copies of the print-outs of pages showing images of piratical works infringing upon Mr. Fountain’s copyrights. As of today, seven such items are shown on Belrose’s website, namely, “Homework” as B164[1], “Interlude” as B143[1], “Sit Boy, Sit” as B165[1], “Linsay” as B136[1], “Daisy” as B523[1], “Bucketful” as B522[1], and “Matthew’s Goose” as B701[1].

7. Attached hereto as Exhibit F is a collection of true and correct copies of images of Mr. Fountain’s original works listed in paragraph 6 above.

8. Upon this discovery, at or about 11 a.m. yesterday, I called Belrose at the number given on its homepage (1-877-523-5767) and inquired about the bronze children items

¹ Pursuant to Judge Katz’s directions, Mr. Fountain is to serve and file his Proposed Findings and Conclusions today.

on its website. I asked whether these items were for sale as I did not see a price list. The man I spoke with assured me that they were for sale and gave me quoted prices as follows: B143[1] (a copy of “Interlude”) priced at \$2,500 and B165[1] (a copy of “Sit Boy, Sit”) priced at \$1,800. He also told me that I can make a purchase and make arrangements for shipment over the phone.

9. Belrose has failed to appear to defend this action, has completely ignored the judicial process, and has violated the terms of the permanent injunction and other relief imposed by this Court.

10. Pursuant to paragraphs 16.A. through 16.F. of the Order, Belrose with its officers, agents, employees, associates, affiliates, successors or assigns, and all persons acting in concert with any of them are permanently enjoined and restrained from, among other things, selling or listing for sale any of the Fountain Works (as defined in the Order) or any sculptural work that is confusingly similar to any of the Fountain Works. In contempt of the Order, Belrose continues to sell piratical items to date.

11. The Order also directs Belrose to deliver up for destruction, among other things, labels, advertising, literature, packaging, printing plates or other materials that bear any mark or designation, or content in violation of Mr. Fountain’s rights. (Paragraph 18 of the Order.)

12. Belrose has also failed to comply with the Court’s order that it produce its books and records to Mr. Fountain within 30 days of the entry of the Order. (Paragraph 21 of the Order.)

13. Indeed, Belrose has not complied with any provision of the Order.

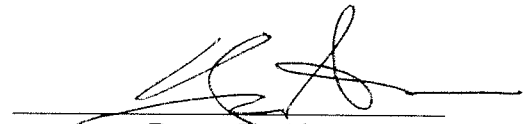
14. Mr. Fountain therefore respectfully requests that the Court find Belrose to be in contempt of the Order and to grant him such relief as is just and proper, including imposing coercive sanctions and awarding him his attorneys' fees.

15. No prior application has been sought for the relief requested herein.

16. This application is brought on by an Order to Show Cause due to the exigent circumstances as stated above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 15, 2008.



Deana D. Ahn

BAINTON MCCARTHY LLC
J. Joseph Bainton (JB-5934)
26 Broadway, Suite 2400
New York, NY 10004
(212) 480-3500
(212) 480-9557 (fax)

Attorneys for Plaintiff Desmond Fountain

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DESMOND FOUNTAIN,

Plaintiff,

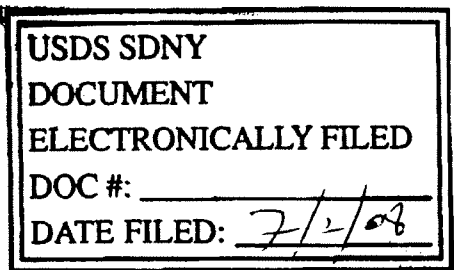
- against -

BELROSE, INC.
d/b/a BELROSE GALLERIES,

Defendant.
-----x

08 Civ. 3285 (LAK) (THK)

~~Proposed~~ **DEFAULT
JUDGMENT, PERMANENT
INJUNCTION AND ORDER
FOR OTHER RELIEF**



This action having been commenced on April 1, 2008 by the filing of the Summons and Complaint, and a copy of the Summons and Complaint having been personally served on Defendant, Belrose, Inc. d/b/a Belrose Galleries ("Belrose"), on April 7, 2008 by personal service on Charles Issacc, Managing Agent, at Belrose's place of business at 1505 Boardwalk, Atlantic City, New Jersey 08401, and a proof of service having been filed on April 11, 2008 and Belrose not having answered the Complaint, and the time for answering the Complaint having been expired, the Clerk of the Court having entered default as to Belrose on May 7, 2008, and Plaintiff Desmond Fountain ("Fountain") now seeking the entry of default judgment on all of his claims against Belrose pursuant to Federal Rule of Civil Procedure 55(b)(2), Plaintiff Fountain's Motion for the Entry of Default Judgment against Defendant Belrose is hereby GRANTED, and IT IS THEREFORE ORDERED, ADJUDGED AND DEGREED as follows:

1. The Court has jurisdiction of the subject matter of this action and the persons of the parties hereto.
2. Venue lies properly with this District.
3. Plaintiff's Complaint states a claim upon which relief can be granted against Defendant under Section 501 of the Copyright Act, 17 U.S.C. § 501.
4. Defendant was properly served on April 7, 2008 pursuant to Federal Rule of Civil Procedure 4.
5. Defendant failed to answer or otherwise respond to this action within the time set forth in Federal Rule of Civil Procedure 12(a), and has otherwise failed to appear in this action either personally or by a representative.
6. The Clerk of Court, under Federal Rule of Civil Procedure 55(a), entered default as to the defendant on May 7, 2008.
7. Defendant is not a minor or an incompetent person.
8. Fountain is the owner of the copyrights of the sculptural works identified on Schedule A and corresponding images thereto (collectively the "Fountain Works").
9. Defendant has wrongfully and otherwise without authorization of Fountain entered into transactions that infringed Fountain's copyrights and by unfairly competing with Fountain.
10. Defendant has violated Section 106 of the Copyright Act, 17 U.S.C. § 106.
11. Defendant's activities have caused and continue to cause, in addition to monetary damages yet to be determined, irreparable harm to Fountain for which there is no adequate remedy at law.

12. Defendant is likely to continue to engage in the activities complained of in this action unless it is prohibited from doing so by order of the Court.

13. This Order is in addition to, and not in lieu of, other remedies as may be provided by law.

14. Plaintiff is entitled to judgment and a permanent injunction pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.

15. Entry of this Order is in the public interest.

16. Effective immediately, defendant with its officers, agents, employees, associates, affiliates, successors or assigns, and all persons acting in concert with any of them, are permanently enjoined and restrained from:

- A. Selling or listing for sale any of the Fountain Works or any sculptural work that is confusingly similar to any of the Fountain Works;
- B. Holding themselves out as the owner of, or as an entity with authorization to sell, transfer, copy, or assign any of the Fountain Works;
- C. Performing any actions or using any words, names, styles, titles or works which are likely to cause confusion, to cause mistake or to deceive, or to otherwise mislead the public into believing that Fountain is a sponsor of defendant, or that defendant is in some manner affiliated or associated with or under the supervision and control of Fountain, or that the products and services of defendant originate with Fountain or are conducted or offered with the approval, consent or authorization, or under the supervision of Fountain, or are likely in any way to lead the public to associate defendant with Fountain;

- D. Using any word, name styles, titles or marks which create a likelihood of injury to the business reputation or goodwill of Fountain;
- E. Using any unfair trade practices which competes with or injures Fountain's reputation, the Fountain Works, and the goodwill associated therewith; and
- F. Directly or indirectly copying, publishing, reproducing, distributing, disseminating, performing, displaying or creating any works, including any derivative works of the Fountain Works, or any of them, in whole or in part, by any means in any media now known or hereafter developed in any time, place or fashion.

17. Fountain is the owner of certain copyrights with respect to sculptural works which are not listed under Schedule A hereto (the "Non-Listed Works"). With respect to any of the Non-Listed Works, defendant, including its officers, agents, employees, associates, affiliates, successors and assigns, and all persons acting in concert with any of them, are permanently enjoined and restrained from knowingly doing anything listed in subparagraphs A, B, C, D, E or F of Paragraph 16 above.

18. Defendant shall deliver up forthwith for destruction for any and all merchandise, labels, advertising, literature, packaging, promotional material, mechanicals, printing plates or other materials in its possession or control that bear any mark or designation, or content in violation of Fountain's rights as decreed herein or from which such merchandise, materials or packaging may be manufactured or created.

19. Defendant shall use its best efforts to recall from any and all channels of distribution any products and/or sales, advertising or promotional material distributed directly or

indirectly by defendant bearing any mark, symbol, designation, or content in violation of the injunction herein.

20. For the purposes of determining monetary damages, including without limitation recovery of Defendant's profits, and other monetary relief, including awarding Fountain his attorneys' fees and other costs of this action, the ~~Court shall conduct a hearing on a date to be determined by the Court.~~ *matter is referred to a magistrate judge.*

21. In contemplation of such a hearing, Defendant shall produce to Fountain its books and records within 30 days of the entry of this Default Judgment, Permanent Injunction and Order. *22. The Clerk shall terminate the motion for a default judgment.*

~~IT IS FURTHER ORDERED that, as there is no just reason for delay of entry of this judgment, under Federal Rule of Civil Procedure 54(b), the Clerk shall enter this Order immediately.~~

Dated: New York, New York
July 2, 2008



U.S.D.J.

This document was entered on the docket on
_____.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Plaintiff,

Dermoid Fountain

-v-

Calrose, Inc

Defendant.

ORDER OF REFERENCE
TO A MAGISTRATE JUDGE

08cv3285 (LAK) (TH)

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #

DATE FILED: *7/2/08*

The above entitled action is referred to the designated Magistrate Judge for the following purpose(s):

☐ General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement)

☐ Specific Non-Dispositive Motion/Dispute:*

If referral is for discovery disputes when the District Judge is unavailable, the time period of the referral: _____

☐ Settlement*

☒ Inquest After Default/Damages Hearing

☐ Consent under 28 U.S.C. §636(c) for all purposes (including trial)

☐ Consent under 28 U.S.C. §636(c) for limited purpose (e.g., dispositive motion, preliminary injunction)
Purpose: _____

☐ Habeas Corpus

☐ Social Security

☐ Dispositive Motion (i.e., motion requiring a Report and Recommendation)
Particular Motion: _____

All such motions: _____

*Do not check if already referred for general pretrial.

Dated *7/1/08*

SO ORDERED:

[Signature]
United States District Judge

DESMOND FOUNTAIN

Plaintiff

Superior Court Of New Jersey

vs.
BELROSE, INC. DBA BELROSE GALLERIES

DISTRICT OF NY Venue

Defendant

Docket Number: 08 CV 3285 (LAK)(THK)

Person to be served (Name and Address):

BELROSE, INC
1505 BOARDWALK
ATLANTIC CITY NJ 08401

By serving: BELROSE, INC

AFFIDAVIT OF SERVICE

(For Use by Private Service)

Attorney: N/A

Cost of Service pursuant to R. 4:4-3(c)

\$ _____

Papers Served: ORDER OF REFERENCE TO A MAGISTRATE JUDGE AND
THE EDORSED DEFAULT JUDGMENTService Data: ☒ Served Successfully ☐ Not Served

Date/Time: 07/08/2008 03:04PM

☐ Delivered a copy to him/her personally☐ Left a copy with a competent household member over 14 years of age
residing therein (indicate name & relationship at right)☒ Left a copy with a person authorized to accept service, e.g. managing agent,
registered agent, etc. (indicate name & official title at right)Attempts: Date/Time: _____
Date/Time: _____
Date/Time: _____

Name of Person Served and relationship/title:

CHARLES ISAAC

MANAGING AGENT

Description of Person Accepting Service:

SEX: M AGE: 36-50 HEIGHT: 5'4"-5'8" WEIGHT: OVER 200 LBS. SKIN: BLACK HAIR: BLACK OTHER: _____

Unserved:

- ☐
- Defendant is unknown at the address furnished by the attorney
-
- ☐
- All reasonable inquiries suggest defendant moved to an undetermined address
-
- ☐
- No such street in municipality
-
- ☐
- Defendant is evading service
-
- ☐
- No response on:

Date/Time: _____
Date/Time: _____
Date/Time: _____

Other:

Served Data:

Subscribed and Sworn to me this

9 day of July, 2008

Notary Signature: 

JANIRA SANTIAGO VELEZ

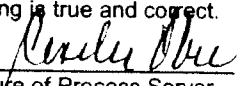
NOTARY PUBLIC OF NEW JERSEY

Name of Notary

Commission Expiration

My Commission Expires April 24, 2012

I, CECELIA OBIE

was at the time of service a competent adult, over
the age of 18 and not having a direct interest in the
litigation. I declare under penalty of perjury that the
foregoing is true and correct.
Signature of Process Server7/9/2008
Date

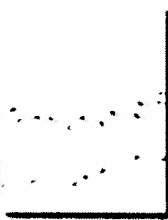
Name of Private Server: CECELIA OBIE Address: 2009 Morris Avenue UNION, NJ 07083 Phone: (908) 687-0056

HW

eb



Bronze



Jewelry



Fountains



Chandeliers



Antiques



Art



Furniture



Specials



Belrose Galleries

Under Construction

Check out our E-bay store.

Email us at belrose@comcast.net

Bronze Children



3239
375 X 500
17 KB



3253
375 X 500
16 KB



A-440
264 X 500
28 KB



A-611
360 X 500
40 KB



AN-11[1]
237 X 500
20 KB



B136[1]
375 X 500
18 KB



B143[1]
274 X 500
22 KB



B164[1]
500 X 375
17 KB



B165[1]
375 X 500
19 KB

created with
EXPRESS
Thumbnail Creator
(trial message)

Bronze Children



B215[1]
313 X 500
24 KB



B291[1]
212 X 500
15 KB



B356[1]
232 X 500
21 KB



B471[1]
500 X 363
35 KB



B493[1]
302 X 500
18 KB



B522[1]
215 X 500
16 KB



B523[1]
331 X 500
26 KB



B526[1]
393 X 500
31 KB



B533[1]
413 X 500
42 KB

created with
EXPRESS
Thumbnail Creator
(trial message)

Bronze Children



B662[1]
270 X 500
23 KB



B685[1]
193 X 500
19 KB



B688[1]
381 X 500
36 KB



B691[1]
500 X 429
22 KB



B692[1]
500 X 452
36 KB



B700[1]
500 X 383
32 KB



B701[1]
480 X 500
34 KB

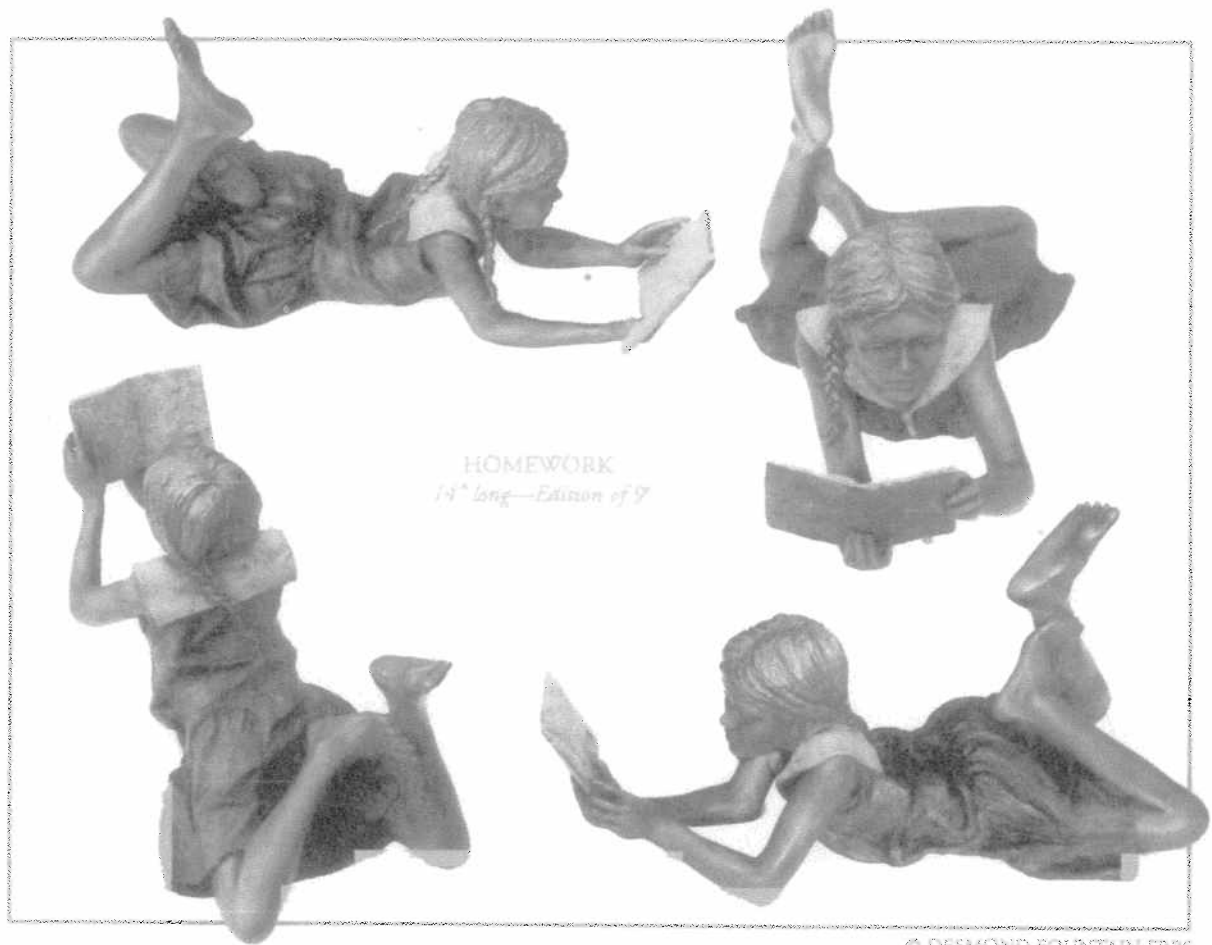


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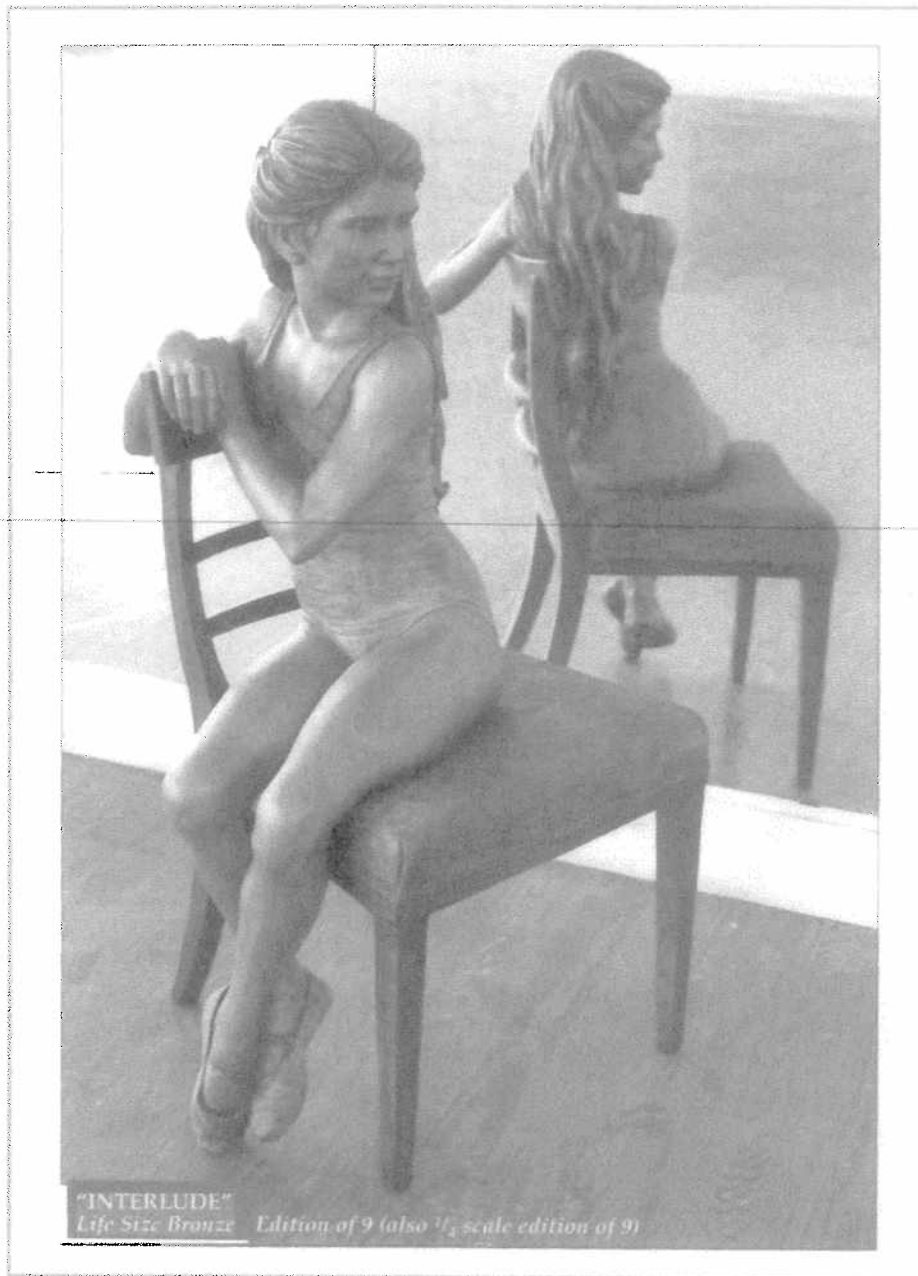
B708[1]
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30 KB

created with
EXPRESS
Thumbnail Creator
(trial message)



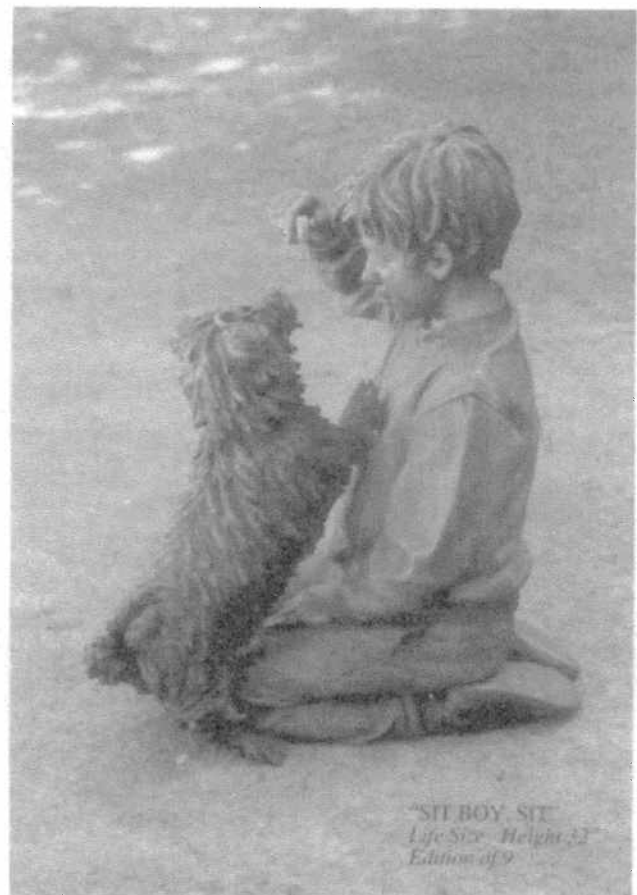
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①



© DESMOND E. MOUNTAIN FRHS

2



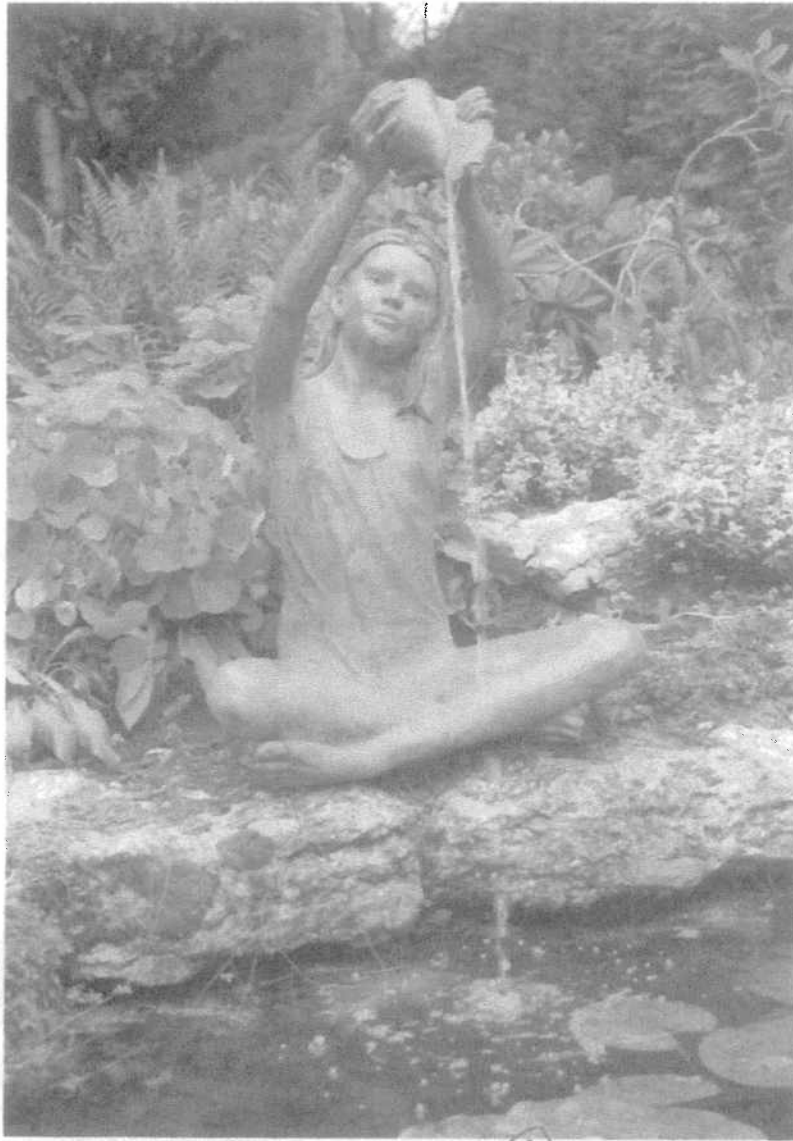
© DESMOND MOUNTAIN, FRBS

3



STATUE OF A YOUNG GIRL

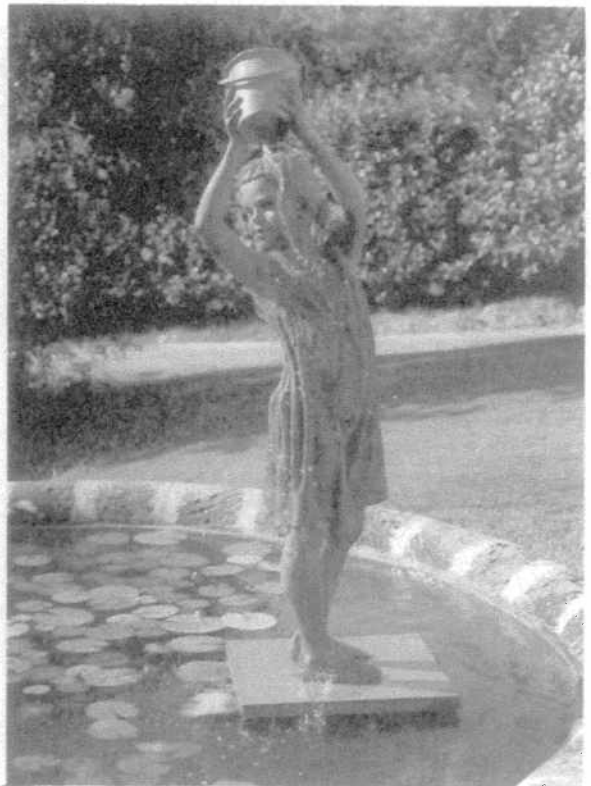
5



DAISY *Life-size water sculpture—Edition of 9*

(6)

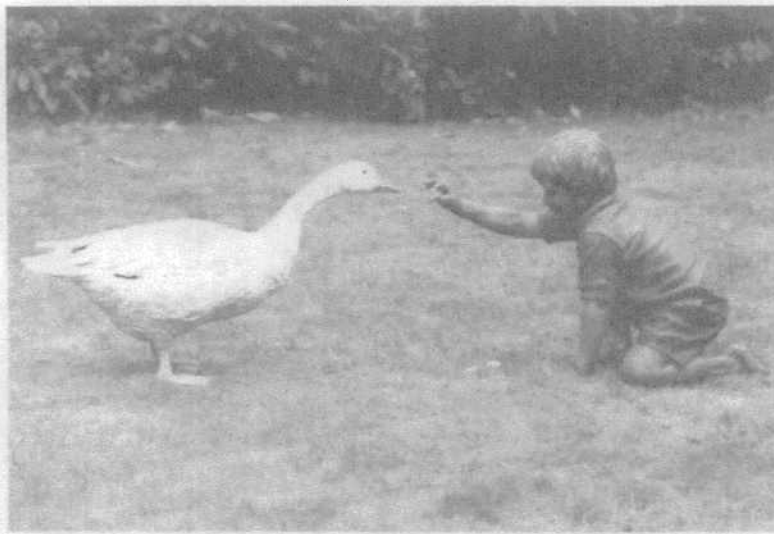
© DESMOND FOUNTAIN FRS



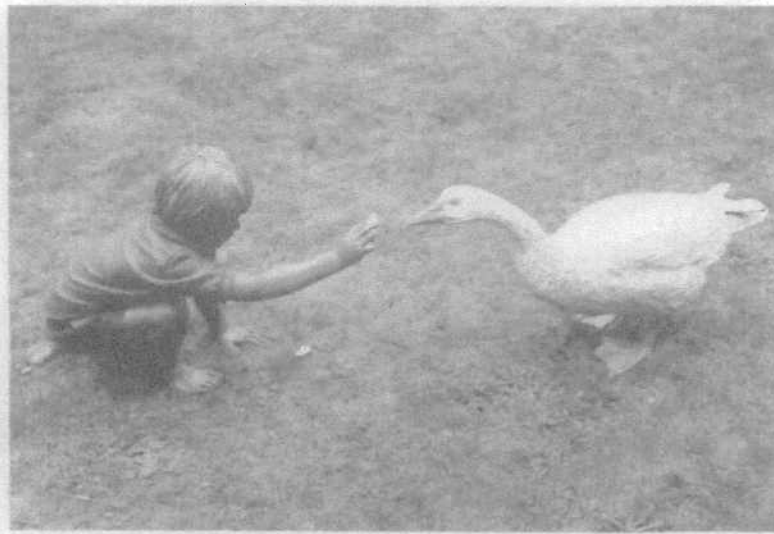
BUCKETFUL, Life-size glass sculpture—Edition of 9

7

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MATTHEW'S GOOSE *Lifesize—Edition of 9*



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(19)